

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Patrick Lynn, Chief of Police (954) 693-8320

PREPARED BY: Angela Rodgers

SUBJECT: Ordinance

AFFECTED DISTRICT: Townwide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, PROHIBITING GRAFFITI; AND RELATING TO NUISANCES, BY CREATING THE GRAFFITI PREVENTION AND REMOVAL ORDINANCE, PROVIDING DEFINITIONS; DECLARING A NUISANCE; UNLAWFUL ACTIVITIES AND DUTIES OF REMOVAL; DESIGNATING THE TOWN OF DAVIE POLICE DEPARTMENT AND CODE ENFORCEMENT WITH INVESTIGATORY AND ENFORCING AUTHORITY; SETTING FORTH A PROCEDURE FOR IMPLEMENTATION AND A BUDGET FOR FUNDING; PROVIDING FOR CIVIL AND CRIMINAL REMEDIES; PROVIDING FOR CONFLICT, SEVERABILITY, INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: In collaboration with the Code Enforcement Department and the Town Attorney's Office, the Police Department has created a new ordinance to address graffiti issues within the Town of Davie. This ordinance provides the Police Department and the Code Enforcement Department the authority to enforce and investigate graffiti complaints. The graffiti ordinance will also provide criminal and civil remedies.

PREVIOUS ACTIONS: Council tabled on the May 7, 2008 Meeting and moved to the May 21, 2008 Meeting. At the May 21, 2008 meeting Council tabled this item to the June 4, 2008 meeting.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

Additional Comments:

RECOMMENDATION(S): Motion to approve ordinance

Attachment(s): Ordinance

TOWN OF DAVIE, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, PROHIBITING GRAFFITI; AND RELATING TO NUISANCES, BY CREATING THE GRAFFITI PREVENTION AND REMOVAL ORDINANCE, PROVIDING DEFINITIONS; DECLARING A NUISANCE; UNLAWFUL ACTIVITIES AND DUTIES OF REMOVAL; DESIGNATING THE TOWN OF DAVIE POLICE DEPARTMENT AND CODE ENFORCEMENT WITH INVESTIGATORY AND ENFORCING AUTHORITY; SETTING FORTH A PROCEDURE FOR IMPLEMENTATION AND A BUDGET FOR FUNDING; PROVIDING FOR CIVIL AND CRIMINAL REMEDIES; PROVIDING FOR CONFLICT, SEVERABILITY, INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE..

WHEREAS, the Town Council is the governing body in and for the Town of Davie, a municipal corporation in the State of Florida; and

WHEREAS, Florida Statutes §806.13(8) recognizes that because of the difficulty of confronting the blight of graffiti, it is the intent of the Legislature that municipalities and counties not be preempted by state law from establishing ordinances that prohibit the marking of graffiti or other graffiti-related offenses; and

WHEREAS, as related to graffiti, such municipalities and counties are not preempted by state law from establishing higher penalties than those provided by state law and mandatory penalties when state law provides discretionary penalties, mandating that upon a finding that a juvenile has violated a graffiti-related ordinance, a court acting under Florida Statutes Chapter 985 may not provide a disposition of the case which is less severe than any mandatory penalty prescribed by municipal or county ordinance for such violation; and

WHEREAS, the Town of Davie finds itself in a situation where portions of the Town are consistently targeted and are marked by graffiti, creating blight to a portion of the Town of Davie; and

WHEREAS, the Town Council finds that with the overall growth of Davie, the necessity of an anti-graffiti ordinance has become increasingly important in that graffiti destroys community pride, makes the Town a less desirable place in which to live, and costs the Town citizens unnecessary tax dollars each year for removal; and

WHEREAS, the Town Council further finds that enacting such an ordinance is in the common interest of the people of the Town in that it would foster strong civil awareness, cooperation, and a sense of personal responsibility; and

WHEREAS, Chapter 166, Florida Statutes, authorizes the Town Council acting for the Town of Davie, Florida, to adopt Ordinances and Resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of Ordinances in accordance with law; and

WHEREAS, the Town Council finds it necessary to adopt an anti- graffiti ordinance to assist in the elimination of nuisances.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION ONE: TITLE AND CITATION

This ordinance shall be known and cited as the "Town of Davie Graffiti Prevention and Removal Ordinance."

SECTION TWO: DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The words "shall" and "will" are mandatory and not discretionary.

“Felt tip marker” means any indelible marker or similar implement with a tip that, at its broadest width is greater than one-eighth (1/8) inch, containing an ink that is not water soluble.

“Graffiti” means any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn or painted on any surface of public or private property, including but not limited to, buildings, structures or places.

“Graffiti implement” means an aerosol paint container, a felt tip marker, or a paint stick or etching tool capable of scarring glass, metal, concrete or wood.

“Paint stick” or **“graffiti stick”** means any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure and, upon application, leaving a mark at least one-eighth (1/8) inch in width visible from a distance of twenty (20) feet and not water soluble.

SECTION THREE: NUISANCE DECLARED

It is hereby declared and determined that graffiti defacing any private or public building or structure or property of any kind impairs the economic welfare of property, contribute and/or creates a health and safety hazard, and shall constitute a nuisance when any graffiti is located on any property in the Town.

SECTION FOUR: PROHIBITIONS

(a) In addition to the crimes defined by Florida Statutes § 806.13:

(1) It is unlawful for any person to, or endeavor to, paint, chalk, etch or otherwise apply graffiti on public or privately owned buildings, permanent structures or places located on public or privately owned property within the Town.

(2) It is unlawful for any person to have in his or her possession for the purpose of defacing property, any graffiti implement while in any public park, school grounds, playground, swimming pool, public recreational facility, any public right-of-way, or other public grounds in the Town or while on private property not open to the public without

the owner's or agency's permission. Among the circumstances that may be considered by the enforcement officer in determining whether such intent exists are:

- a. The person takes flight upon appearance of an enforcement officer;
- b. Refuses to identify himself/herself;
- c. Manifestly endeavors to conceal himself/herself while in possession of a graffiti implement; or
- d. Any other action the enforcement officer reasonably believes to be consistent with a person about to deface property.

(b) Prior to any citation being issued to a person for a violation of this article, such person shall be afforded an opportunity by the enforcement officer to dispel any alarm or immediate concern in which could otherwise be warranted by requesting the person to identify himself/herself and explain the person's presence and conduct.

SECTION FIVE: PROHIBITED ACTS BY PROPERTY OWNER

(a) It is unlawful for any owner, occupant or agent to knowingly suffer or permit any graffiti to remain upon any building, permanent structure or place under his control.

(b) If after three (3) days of notification of the violation, the graffiti has not been removed from the premises, the Town will undertake any necessary removal and clean-up. Any cost or expense incurred by the Town for removal and clean-up of private property shall be billed to the owner within fourteen (14) days of receipt of the invoice from the vendor. Failure to remove the graffiti within the allotted three (3) days shall cause to accumulate a fine of twenty-five dollars (\$25.00) per day until the removal and clean-up is complete.

SECTION SIX: DESIGNATION OF INVESTIGATING AND ENFORCING AUTHORITY

The Town of Davie Police Department and the Code Enforcement department are hereby authorized to enforce the provisions of this Ordinance. The Town Administrator, or his/her designee, is hereby designated to assist with the investigation and enforcement of the provisions of this Ordinance. The Town Administrator, or his/her designee, is hereby directed and empowered to receive all complaints of violations of this Ordinance and to enter upon real property in the conduct of official business pursuant to this Ordinance.

The Town Administrator, or his/her, designee shall be responsible for providing all notices to affected property owners required by this Ordinance and to take such other action as is reasonably necessary to accomplish the purpose of this Ordinance, including, but not limited to, creating a program to assist property owners with the prompt removal of any graffiti.

SECTION SEVEN: PROCEDURE FOR IMPLEMENTATION

Any property owner, occupant or agent who maintains graffiti on property as described in this Ordinance, shall be required to remove said graffiti by repainting or cleaning that portion of any surface of public or private buildings, structures or places marked with graffiti. The Town Administrator, or his/her designee, shall inspect lands where a nuisance is suspected to exist. In the event inspection reveals graffiti, the Town Administrator, or his/her designee, shall notify the record owner, if he/she can not be located at the subject property, by registered or certified mail, return receipt requested, and physically post a notice on the property which states that a nuisance exists. The notice shall demand that the owner remedy the condition or file a Notice of Appeal with the Town Administrator. Notice shall be mailed to the address of the owner found in the Broward County public records. The owner shall have three (3) days from the date the notice is received to abate the nuisance. For the purposes of this Ordinance, the owner shall be deemed to have received notice on the tenth working day after the notice is placed in the United States Mail, certified and return receipt requested. In the event the owner, occupant or agent is located on the subject property, the Town may hand-deliver the notice to the owner, occupant or agent of the property. Evidence that notice has been mailed, posted or delivered as provided in this section shall be sufficient to show that the notice requirements of this section have been satisfied, without regard to whether or not the property owner actually received such notice. The form of the notice shall be substantially as follows:

FIRST NOTICE OF VIOLATION

DATE OF MAILING:

TO:

ADDRESS:

PROPERTY NO.:

As the Owner of the above-described property, you are hereby notified that a nuisance exists upon such property, contrary to the Town of Davie Graffiti Prevention and Removal Ordinance. The nuisance consists of graffiti as marked on the above-described property. You are hereby ordered to abate the nuisance by removing the graffiti within three (3) days of receipt of this Notice. Upon your failure to abate this nuisance within the time provided, Town employees, servants, agents or contractors will enter upon your property and abate the nuisance. The cost of such abatement will be levied as an assessment against your property. Thereafter, the Town Administrator shall prepare an assessment bill for the entire cost of abatement. The Town may record a lien against your property for the cost of abatement.

If you wish to contest this Notice of Violation, you may appeal to the Town Administrator. Requests for appeal must be made in writing and should be directed to the Town Administrator within three (3) days of receipt of this Notice. The matter shall then be set for hearing by Special Magistrate.

In the event of non-compliance with this notice, the Town shall provide a second notice containing an invoice detailing the costs incurred by the Town to abate the nuisance on your property along with a request for payment of these costs within fifteen (15) days of the date of the notice. In the event this invoice is not paid in full within fifteen (15) days, an assessment lien will be placed against your property. The assessment is created by a resolution signed by the Mayor and includes the cost to abate the nuisance and associated administrative costs. Under the resolution, the Town will be entitled to collect interest on the unpaid balance of the assessment at the rate of 12% per year for the life of the lien. Upon execution of the resolution, the Town Administrator will cause a certified copy of the resolution to be recorded in the official public records of Broward County, Florida. You should understand that once this resolution is recorded it

constitutes a special assessment lien against your property that will remain until it is paid. This means that any subsequent transfer, sale or other disposition of the property will be affected or otherwise be encumbered by this lien. Further, you should also be aware that the Town has the power to enforce any assessment, together with this accumulated interest thereon, by civil action, including but not limited to, foreclosure of the lien.

All questions and requests for appeals shall be directed to:

Town Administrator
6591 Orange Drive
Davie, Florida 33314

Within three (3) days of receipt of the First Notice of Violation by mail, hand-delivery or posting, the owner of the property may make a written request to the Town Administrator for a hearing to demonstrate that the condition alleged in the notice does not exist or that such a condition does not constitute a nuisance. All decisions of the Town Administrator shall be final. After expiration of the three (3) day abatement period, the Town Administrator shall re-inspect the property to ascertain whether the nuisance has been abated. Should the Town Administrator determine that the condition of the property remains a nuisance as defined in this Ordinance, the Town Administrator is authorized to enter upon the property and take such steps as are reasonably necessary to effect abatement. The Town Administrator is also authorized to abate the nuisance if reasonable attempts to notify the owner have failed. After abatement by the Town, the Town Administrator shall prepare an assessment bill which includes the name of the owner, a description of the affected parcel, and a brief description of services rendered including administrative and operating expenses incurred in abating the nuisance. The Town Administrator shall send this information by regular mail to the owner. The notice shall demand payment of the assessment within fifteen (15) days of mailing; and shall provide that, if the assessment bill is not paid as directed, the Town will place a lien against the property. Interest on said lien shall accrue at a rate of twelve percent (12%) per annum on the unpaid balance of the assessment. The notice shall state that at the time and place mentioned (not less than thirty (30) days from the date of mailing of said notice), the Council shall adopt a Resolution that shall levy a special assessment lien in the full amount of such costs listed against the assessed property. Such Resolution shall describe the property and show the cost of abatement. After the Assessment Resolution has been adopted, a certified copy of the Resolution shall be recorded in the Official Records of Broward County. The Special Assessment Lien shall become effective and due and payable to the Town on the date the Resolution is recorded in the official records of Broward County, and such recordation shall serve as constructive notice of the existence

of said lien. Until payment is complete, such assessment shall be a legal, valid and binding obligation on the property. The form of the second notice shall be substantially as follows:

SECOND NOTICE OF VIOLATION AND INVOICE

DATE OF MAILING:

TO:

ADDRESS:

PROPERTY NO.:

INVOICE NO.:

*REFERENCE NO.: **

CONTRACTOR REIMBURSEMENT \$

CERTIFIED MAIL REIMBURSEMENT \$

ADMINISTRATIVE REIMBURSEMENT \$

As the Owner of Record of the above-described property, you were notified on (date) that a nuisance existed on your property contrary to Town of Davie Graffiti Prevention and Removal Ordinance. At that time, you were ordered to abate the nuisance within three (3) days of receipt of notice, or risk the imposition of an assessment lien against the property for the full cost of abatement to the Town. Since the violation was not abated in a timely fashion, the Town Administrator took steps necessary to abate the nuisance. At the present time, there is an impending assessment lien which shall accrue interest at a rate of twelve percent (12%) per annum on any unpaid balance if not paid within fifteen (15) days from the date this notice was mailed. If the Town has not received full payment, the Town Council will adopt a resolution that shall levy a special assessment lien against the property. The assessment lien will be a legal, valid and binding obligation. Once recorded, the assessment lien shall run with the land and must be satisfied upon sale, transfer or any other disposition of the property. This assessment together with interest thereon, may be enforced by civil action in a Broward County Court of appropriate jurisdiction. It is hereby requested that you immediately pay such assessment to the Town of Davie.

* Please use this reference number in all correspondence.

SECTION EIGHT: BUDGET OF FUNDS

Removal of Graffiti as set forth herein is declared to be for a municipal purpose and the Town Administrator is authorized to budget in order to set up funds for the carrying out of the purposes of this Ordinance.

SECTION NINE: CRIMINAL AND CIVIL REMEDIES

Persons violating Section Four (a)(1)-(2) shall be guilty of a misdemeanor of the second degree, punishable as provided in Florida Statutes §§775.082 and 775.083.

Persons violating Section Five (a)-(b) shall be subject to civil remedies including, but not limited to, the institution in any court, or before any administrative board of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Ordinance or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge to the Plaintiff such relief by way of injunction or any other remedy allowed by law or otherwise, to include mandatory injunction, as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted and orders and rulings made pursuant thereto.

SECTION TEN: SEVERABILITY

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any Court of competent jurisdiction shall hold any of the provisions of this Ordinance unconstitutional, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the Town Council for the Town of Davie that this Ordinance would be adopted had such unconstitutional provision not been included herein.

SECTION ELEVEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Town of Davie Ordinance or Florida Statutes, the more restrictive shall apply.

**SECTION TWELVE: CODIFICATION, INCLUSION IN CODE AND
SCRIVENER'S ERRORS**

It is the intention of the Town Council for the Town of Davie that the provisions of this Ordinance shall become and be made a part of the Davie Code of Ordinances; and that sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this Ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the Town Administrator's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Town Clerk.

SECTION THIRTEEN: EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2008

PASSED ON SECOND READING THIS _____ DAY OF _____, 2008

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2008